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09/800,793	03/07/2001	John Hathaway	940-3079-U	5476
7590	03/24/2005		EXAMINER	
Robert H. Earp, III McDonald, Hopkins, Burke & Haber Co., L.P. A. 2100 Bank One Center 600 Superior Avenue, E. Cleveland, OH 44114-2653			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 03/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.



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GROUP 3700

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 09/800,793

Filing Date: March 07, 2001

Appellant(s): HATHAWAY ET AL.

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Todd A. Benni  
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 22, 2004.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

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A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3)     *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4)     *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5)     *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6)     *Issues***

The appellant's statement of the issues in the brief is correct.

**(7)     *Grouping of Claims***

Appellant's brief includes a statement that claims 3-14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8)     *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9)     *Prior Art of Record***

1,842,226	Williams	1-1932
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5,320,236	Gregory	6-1994
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**(10)    *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the conventional prior art closure in view of Williams.

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Applicant discloses at page 1, paragraph 3 of the instant specification that it is known in the art to provide a closure having a cap portion, an annular sealing surface extending below the cap portion and having a *part line flash* thereon, the sealing surface engaging a gasket between the cap and a container opening, and an annular threaded section below the sealing surface. Applicant discloses the conventional closure does not teach a pair of annular sealing bands on the sealing surface through at least a portion of the part line flash.

Williams teaches it is known to provide a closure having at least one annular sealing band for engaging a gasket above the closure threads and between the closure and an associated container neck.

It would have been obvious to one of ordinary skill in the ad at the time the invention was made to apply the teaching of at least one annular sealing band to the sealing surface of the conventional known closure disclosed by applicant as taught by Williams. Doing so would correct for defects of the closure and associated container opening to provide a more reliable seal without the necessity of removing the part line flash, thus saving manufacturing costs. To provide a pair of annular beads instead of only one would have been obvious to one of ordinary skill in the art at the time the invention was made, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

#### **(11) Response to Argument**

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

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applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would look to a teaching in the art to provide an effective sealing engagement between a closure engaging a gasket against an associated container.

By appellant's admission, the conventional closure has a cap portion, an annular sealing surface extending below the cap portion and having a *part line flash* thereon, and an annular threaded section below the sealing surface. See page 1, paragraph 3 of the instant specification. Appellant further discloses the need to provide an effective seal between the closure and an associated container requires an additional manufacturing step of removing the part line flash on the sealing surface.

Williams provides the teaching of a sealing ring 12, or bead, on a sealing surface of a closure for engaging gasket 11 for effectively sealing a container opening. One of ordinary skill in the art at the time the invention was made would have utilized the teaching of a sealing bead to engage an associated gasket for effectively sealing an associated container neck opening. The sealing bead is effective in negating the additional manufacturing step of removing the part line flash.

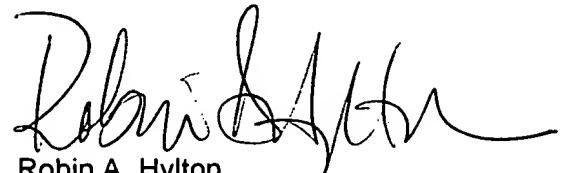
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Contrary to appellant's assertion that the rejection is "conclusory" and not based on fact, the factual evidence lies in the teachings of the conventional closure having a part line flash and of the closure of Williams. Further, appellant asserts erroneously that the combining of the conventional closure disclosed on page 1 of the specification and the closure of Williams does not teach all of the claimed limitations. Appellant admits the conventional closure has a part line flash.

To further support the evidence of using a bead to engage a gasket for an effective sealing engagement between a closure and an associated container, the patent to Gregory is cited for its teaching of compensating "for any unevenness and out-of-round" surfaces on the container finish (column 1, lines 51-52). This reference is not cited as part of a new grounds of rejection, but in response to appellant's assertions in the appeal brief filed December 22, 2004. For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

  
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RAH  
March 17, 2005

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